

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

GALE F. HERBOLD,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

CV 12-135-M-DLC-JCL

ORDER

In this case, which Plaintiff Gale F. Herbold brought under 42 U.S.C. § 405(g) seeking judicial review of the decision of the Commissioner of Social Security, there are two pending motions for summary judgment. Plaintiff filed a motion (doc. 10) on January 14, 2013, and Defendant filed a motion (doc. 17) on March 12, 2013. United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations on June 27, 2013. The parties did not file objections and so have waived the right to de novo review. 28 U.S.C. § 636(b)(1). The Findings and Recommendations are instead reviewed for clear error.

*McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313

(9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch recommended that Herbold’s motion be denied and the Commissioner’s motion be granted. Further he recommended that the Commissioner’s decision be affirmed. Judge Lynch addressed the five-step sequential evaluation process followed by the Commissioner to determine whether a claimant is disabled. At the outset, Judge Lynch stated the standard of review for a decision of the Commissioner of Social Security is limited by this Court. He concluded that the Administrative Law Judge’s decision was based on substantial evidence and free of legal error. There is no clear error in his findings or recommendations.

**IT IS ORDERED:**

1. Judge Lynch’s Findings and Recommendation (doc. 23) are adopted in full.
2. The motion for summary judgment by Herbold (doc. 10) is DENIED and the motion for summary judgment by the Commissioner (doc. 17) is GRANTED.
3. The Commissioner’s decision is AFFIRMED.

DATED this 3<sup>rd</sup> day of September 2013.



---

Dana L. Christensen  
District Judge  
United States District Court